

REMARKS

Claims 1-32 are pending and claims 1-32 stand rejected. By virtue of this response, claims 1, 2, 18, and 26 have been amended, and no claims have been added or cancelled. Amendment to the claims is fully supported by the specification (including claims) as originally filed, and no new matter has been added. Accordingly, claims 1-32 are currently under consideration.

For the Examiner's convenience, Applicants' remarks are presented in the same order in which they were raised in the Office Action.

Claim Rejections under 35 USC §102

A. Claims 1-4, 6, 7, 14-20, 24-26, and 29, stand rejected under 35 U.S.C. 102(b) as being anticipated by Migeotte U.S. Patent No. 3,688,235.

Applicants submit that the features of claim 1, as amended, are not disclosed or suggested by Migeotte. In particular, Applicants have amended claim 1 to recite a system for measuring a characteristic of an optical article wherein the light is focused "to converge at a reference location...the reference location within the optical article or on a surface thereof." This amendment is supported in the present application at least by the claims as originally presented (e.g., original claims 2 and 3); accordingly, no new matter has been added by the amendment. Independent claims 18 and 26 have been amended similarly to claim 1 to recite that the light is focused to a location within or on a surface of the optical article.

The amended features of focusing the light to converge at a location "within the optical article or on a surface thereof," are not disclosed or suggested by Migeotte. In contrast, Migeotte clearly and unambiguously states that the light beam 10 is focused to point 11 and that the optical article, sheet 12, is positioned "ahead of the point 11," thus neither within or on a surface of sheet 12. (Migeotte, col. 3, lines 41-45.) This aspect of Migeotte is further reinforced in Fig. 1, where point 11 is clearly illustrated at a distance from the volume and surface of sheet 12. Moreover, there

is no disclosure within Migeotte to modify the disclosure therein to focus beam 10 such that it converges at point 11 within or at a surface of sheet 12.

Applicants have further amended claim 1 (which is fully supported by Figs. 1-3 and the accompanying description) to recite that the sensor generates signals associated with an intensity and position for a received spot of light, and “the processor is configured to receive signals from the sensor associated with a single spot of received light and determine a deflection angle and a direction of the deflection angle of the light from the probe path.” Thus, the deflection angle and direction of the deflection angle associated with a particular location of the optical article are determined from a single spot, e.g., from detection of a single probe beam after interacting with the optical article and without the need for two spots or probe beams to be received and analyzed. In contrast, Migeotte discloses that at least one of sample 12 or mask 8’ must be rotated to record the “sum of angularities,” of two spots of light on the detectors as described therein. (Migeotte, col. 6, lines 33-51.) Thus, the present claim includes the features of determining both the deflection angle and direction from a single spot of light received by the sensor (without two probes and moving the optical article or an optical element of the system as described by Migeotte).

Accordingly, for at least these reasons Migeotte fails to disclose or suggest all the features of claim 1 and the rejection should be withdrawn. Additionally, claims 2-17 depend from claim 1 and are allowable over Migeotte for at least similar reasons as claim 1.

Independent claims 18 and 26 have been amended similarly to claim 1 and are therefore allowable over Migeotte for at least similar reasons as claim 1. Additionally, claims 19-25 and 27-31, which depend from claims 18 and 26, are allowable over Migeotte for at least similar reasons as claims 18 and 26.

Further, with regard to claims 14, 15, 24, 25, and 29, which relate generally to confocal filters and confocal imaging, Applicants disagree with the Examiner’s assertion that Migeotte discloses confocal filters or confocally imaging the light after the light interacts with the optical article. The Examiner states under the “Response to Arguments” heading (pages 8 and 9 of the

Office Action) that “confocal imaging of the light is performed by detector 24 and 28,” and that “confocal filters are disclosed in col. 6, lines 50-56, where screens (20) and (26) shown in Figs. 2a and 3a, may use light filters in place of mask (8).”

Applicants disagree – Migeotte simply does not disclose a confocal filter to facilitate confocal imaging. Migeotte clearly describes the disclosed system and method as forming a “sharp image of the mask 8 [] focused on the central area 22 of the screen 20.” (Migeotte, 5:24-26; 8:42-47.) Thus, the disclosed system and method of Migeotte does not focus the beam to a focal point disposed at a hole of a pin-hole filter as would be the case for confocal imaging. Accordingly, Migeotte cannot be confocally imaging the light because the system and method is described as focusing an image of the disc/mask 8 onto screen 20.

Furthermore, the “confocal filters” identified by the Examiner and described at col. 6, lines 50-56 are clearly described as “a light filter, e.g., a colored or Polaroid filter,” (emphasis added) for the purpose of replacing the mask (8, 8', 8''), which is disposed in the light beam path prior to passing through screen 12. Migeotte provides no disclosure that would suggest such a colored “light filter” is a confocal filter, e.g., including a pin-hole filter. Accordingly, Migeotte does not disclose or suggest a confocal filter, and further, detectors 24 and 28 cannot be said to be confocally imaging the received light (e.g., as recited by claim 24).

Accordingly, Migeotte fails to disclose or suggest the use of a confocal filter or confocal imaging and the rejection to claims 15, 24, 25, and 29 should be withdrawn for at least these additional reasons.

Claim Rejections under 35 USC §103

A. Claims 5, 8, 9, 27, and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Migeotte (U.S. Patent No. 3,688,235).

Claims 5, 8, 9, 27, and 28 depend ultimately from independent claims 1 and 26 and are allowable over Migeotte for at least similar reasons stated above. Accordingly, Applicants request the rejection be withdrawn.

Furthermore, with regard to claim 8, Applicants submit the Examiner has not provided a sufficient rationale for modifying Migeotte to meet the features of claim 8, and has therefore failed to present a *prima facie* case of obviousness. In particular, the Examiner has not identified anything in the prior art that would suggest modifying Migeotte such that the characteristic includes an index of refraction value, and appears to merely be relying on hindsight analysis. For example, the Examiner states that modifying Migeotte would be obvious “to enable the system to acquire more optical information and/or the optical properties of the optical article.” It is well established that the Examiner may not combine references to create an obviousness rejection unless there is some suggestion or motivation in the prior art or knowledge generally available to one of ordinary skill in the art to make the combination. MPEP § 2143. In this instance, the rejection does not rely on the prior art or the knowledge generally available to one of ordinary skill in the art. Accordingly, the rejection clearly lacks any evidence of a motivation for the proposed combination to meet the features of claim 8 such as a reference or affidavit of the Examiner’s personal knowledge. See, 37 CFR 1.104(d)(2).

The Examiner’s remarks under the heading “Response to Arguments” (page 9 of the Office Action) fail to provide any evidence beyond the original Office Action and therefore fails to cure the above recited deficiencies. Accordingly, the rejection therefore fails to provide a *prima facie* case of obviousness and the rejection must be withdrawn.

B. Claims 21-23 and 30-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Migeotte (U.S. Patent No. 3,688,235) in view of Klein et al. (U.S. Patent No. 6,134,011).

Claims 21-23 and 30-32 depend ultimately from independent claims 18 and 26 and are allowable over Migeotte for at least similar reasons stated above. The addition of Klein fails to cure

the deficiencies of Migeotte, nor is Klien alleged to. Accordingly, Applicants request the rejection be withdrawn.

C. Claims 10-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Migeotte (U.S. Patent No. 3,688,235) in view of Fanton et al. (U.S. Patent No. 5,181,080).

Claims 10-13 depend ultimately from independent claim 1 and are allowable over Migeotte for at least similar reasons stated above. The addition of Fanton fails to cure the deficiencies of Migeotte, nor is Fanton alleged to. Accordingly, Applicants request the rejection be withdrawn.

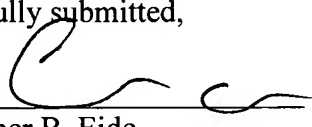
CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 495812005700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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